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PATENT APPLICATION

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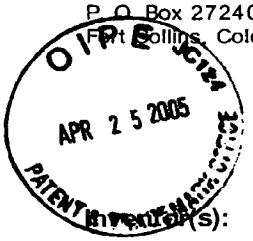

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Daniel W. Hepner et al.

Confirmation No.: 6218

Application No.: 09/422,998

Examiner: H.Q. Pham

Filing Date: 10/21/1999

Group Art Unit: 2162

Title: METHOD AND APPARATUS FOR NOTIFICATION OF USER WHEN CHANGES HAVE OCCURRED IN COMPLEX DERIVATIONS OF DATA

Mail Stop Appeal Brief-Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Sir:

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on **02/25/05**.

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) $500.00.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

( ) (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d) for the total number of months checked below:

( )	one month	$120.00
( )	two months	$450.00
( )	three months	$1020.00
( )	four months	$1590.00

( ) The extension fee has already been filled in this application.

(X) (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account **08-2025** the sum of **$500.00**. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail, Label No. EV629196795US in an envelope addressed to: MS Appeal Brief, Patent, Commissioner for Patents, Alexandria, VA 22313.

Date of Deposit: April 25, 2005

Typed Name: Gail Miller

Signature: Gail Miller

Respectfully submitted,

Daniel W. Hepner et al.

By _____
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Date: **April 25, 2005**

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Docket No.: 10990763-2
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Daniel W. Hepner et al.

Application No.: 09/422,998 | Confirmation No.: 6218

Filed: October 21, 1999 | Art Unit: 2162

For: METHOD AND APPARATUS FOR NOTIFICATION OF USER WHEN CHANGES HAVE OCCURRED IN COMPLEX DERIVATIONS OF DATA | Final Action: H. Q. Pham

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

As required under § 41.37(a), this brief is filed within two months of the Notice of Appeal filed in this case on February 25, 2005, and is in furtherance of said Notice of Appeal.

The fees required under § 41.20(b)(2) are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1206:

I.	Real Party In Interest
II	Related Appeals and Interferences
III.	Status of Claims
IV.	Status of Amendments
V.	Summary of Claimed Subject Matter
VI.	Grounds of Rejection to be Reviewed on Appeal

VII. Argument
VIII. Claims
IX. Evidence
X. Related Proceedings
Appendix A Claims

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is:

Hewlett-Packard Development Company, L.P.

II. RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Total Number of Claims in Application

There are 19 claims pending in the application.

B. Current Status of Claims

1. Claims canceled: 6, 15, and 19
2. Claims withdrawn from consideration but not canceled: None
3. Claims pending: 1-5, 7-14, 16-18 and 20-22
4. Claims allowed: None
5. Claims rejected: 1-5, 7-14, 16-18 and 20-22

C. Claims On Appeal

The claims on appeal are claims 1-5, 7-14, 16-18 and 20-22

IV. STATUS OF AMENDMENTS

Appellant did not file an Amendment After Final Rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

According to claim 1, a computer method of reporting existence of a specified condition in a system attribute comprises:

receiving by a reporting application, which includes computer-executable software code stored to a computer-readable medium, a request from a client to notify said client of a condition of an attribute of a system, wherein said request comprises information specifying a query for said system attribute (304 of figure 3 and page 18, lines 19-23);

using by said reporting application said query for querying said system as specified by said request, for existence of said condition of said attribute (306 of figure 3 and page 18, lines 23-24);

receiving by said reporting application raw data from said system (page 8, lines 6-8);

deriving said data about said system attribute to determine if said condition exists (312 of figure 3 and page 19, lines 5-14); and

upon determining that said condition exists, notifying said client of the existence of said condition (314 of figure 3 and page 19, lines 9-14).

According to claim 4, a method of reporting existence of a specified condition in a system attribute comprises:

receiving a request from a client to notify said client of a condition of an attribute of a system, wherein said request comprises information specifying a query for said system attribute and wherein said attribute is selected from the group (304 of figure 3 and page 18, lines 19-23) consisting of membership of nodes within a cluster page 20, line 23 through page 21, line 9), configuration of a cluster (page 21, lines 10-23), status of a peripheral device (page 21, line 24 through page 22, line 3), failure of computer hardware (page 22, lines 13-23), access to local peripherals (page 22, line 23 through page 23, line 6), addition of shared peripherals (page 21, line 24 through page 22, line 3), removal of shared peripherals (page 21, line 24 through page 22, line 3), ownership of a shared peripheral (page 23, lines 7-15), availability of shared peripherals for addition to a cluster (page 23, lines 12-15), resilience to faults of a High Availability cluster (page 23, lines 16-24), performance potential of a cluster (page 22, lines 4-12), and any combination thereof;

using said query for querying said systems as specified by said request, for existence of said condition of said attribute (306 of figure 3 and page 18, lines 23-24);

deriving data about said system attribute to determine if said condition exists (312 of figure 3 and page 19, lines 5-14); and

upon determining that said condition exists, notifying said client of the existence of said condition (314 of figure 3 and page 19, lines 9-14).

According to claim 7, a method of reporting existence of a specified condition in a system attribute, said method comprising:

receiving a request from a client to notify said client of a condition of an attribute of a system, wherein said request comprises information specifying a query for said system attribute (304 of figure 3 and page 18, lines 19-23), wherein said information specifying a query for said system attribute is an SQL query, and wherein said SQL query comprises an SQL view Page 20, lines 7-14);

querying said system as specified by said request (306 of figure 3 and page 18, lines 23-24);

deriving data about said system attribute to determine if said condition exists (312 of figure 3 and page 19, lines 5-14); and

upon determining that said condition exists, notifying said client of the existence of said condition (314 of figure 3 and page 19, lines 9-14).

According to claim 13, a reporting application for reporting the existence of a specified condition in a system attribute to a client comprises:

computer executable software code for receiving from a client a request to notify said client of a condition of an attribute of a system, wherein said request comprises information specifying a query for said system attribute (304 of figure 3 and page 18, lines 19-23);

computer executable software code for querying said system as specified by said request (306 of figure 3 and page 18, lines 23-24);

computer executable software code for deriving data about said system attribute (312 of figure 3 and page 19, lines 5-14);

computer executable software code for determining from said derived data if said condition exists (312 of figure 3 and page 19, lines 5-14); and

computer executable software code that, upon determining that said condition exists, notifies said client of the existence of said condition (314 of figure 3 and page 19, lines 9-14).

According to claim 18, a system for reporting the existence of a specified condition in a system attribute to a client, said system comprising:

means for storing a reporting application (e.g., 103, 104, and 109 of figure 1 and page 12, lines 2-21);

a means for executing said reporting application (e.g., 101 of figure 1 and page 12, lines 2-21);

wherein said reporting application includes computer executable software code for receiving from a client application program a request to notify said client application program of a condition of an attribute of a system, said request comprising information specifying a query for said system attribute (304 of figure 3 and page 18, lines 19-23), computer executable software code for querying said system as specified by said request (306 of figure 3 and page 18, lines 23-24), computer executable software code for determining if said condition exists (312 of figure 3 and page 19, lines 5-14), and computer executable software code that, upon determining that said condition exists, notifies said client application program of the existence of said condition (314 of figure 3 and page 19, lines 9-14).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

First ground—Claims 1-5, 8-13, 16-18, and 20-22 are rejected under 35 U.S.C. §103(a) as being unpatentable over US Patent 6,182,249 (hereinafter, *Wookey*).

Second Ground—Claims 7 and 14 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Wookey* in view of Transact-SQL User's Guide, 1996 (hereinafter, *Sybase*).

VII. ARGUMENT

A. First Ground of Rejection

1. Claims 1-3, 5, and 11-12

Claims 1-3, 5, and 11-12 are rejected under 35 U.S.C. §103(a) over *Wookey*. Final Action at 12. Appellant traverses the rejection.

To establish a prima facie case of obviousness under 35 U.S.C. § 103(a), three basic criteria must be met. First, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the applied reference. *See In re Vaeck* 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. *In re Merck and Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Finally, the applied reference must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Without conceding any other criteria, Appellant asserts that the Final Action's rejection of these claims does not satisfy the first and third criteria.

a. Lack of Motivation to Modify

The Final Action admits that *Wookey* does not teach "using by said reporting application said query for querying said system as specified by said request, for existence of said condition of said attribute." Final Action at 14. The Final Action then asserts that it would be obvious to modify *Wookey* to include this feature. Id. at 15. The proposed modification of *Wookey* is improper because the motivation provided is incorrect. The Final Action states at page 15:

> Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the diagnostic test as query for existence of attribute condition in order to issue an alert indicating predefined condition exist in a computer system.

Id. Such a motivation is incorrect because the system of *Wookey* already issues an alert indicating a predefined condition exists in a computer system. *See Wookey* at Abstract, first sentence. Because *Wookey*, without modification, provides such function, one of ordinary skill in the art would not be motivated to modify *Wookey*, as proposed. Thus, the Final Action fails to provide proper motivation for the modification, and the rejection of claims 1-3, 5, and 8-12 must fail.

b. Failure to Teach or Suggest Every Limitation

In addition to the lack of motivation, the 35 U.S.C. §103 rejection is improper because *Wookey* does not teach or suggest every element of claim 1. As discussed further below, *Wookey* does not teach or suggest a reporting application that receives a request from a client

and queries a system as specified by that request. *Wookey* teaches two computer systems—a monitoring system (system 100 of figure 1a) and a monitored system (system 102 of figure 1b). The monitored system runs diagnostic tests on itself and periodically reports the results to the monitoring system. See *Wookey* at Col. 3, line 3 through Col. 4, line 11. The tests that are performed are run under the control of monitor control software that is contained entirely within the monitored system. See *Id.* at Col. 4, lines 4-6 and figures 1a and 1b. There is no indication in the teaching of *Wookey* that the monitoring system has any control over the tests that are run on the monitored system or that it requests that any tests be run. When the monitoring system receives the results of the diagnostic tests, it creates a model of the state of the monitored system and compares that model to one or more alarms that are set to indicate predefined conditions. *Id.* at Abstract.

Therefore, it can be seen that *Wookey* does not teach or suggest a reporting application that receives a request from a client and queries a system as specified by that request because the monitoring system sends no request to the monitored system and has no control over the tests that are run. Specifically, claim 1 recites, in part, "using by said reporting application said query for querying said system, as specified by said request, for existence of said condition of said attribute." *Wookey*, as modified, does not teach or suggest at least the above-recited feature of claim 1.

It appears that the Final Action asserts the tests that are run in *Wookey* anticipate the claimed request. Final Action at 12-13. However, claim 1 requires that the request be "from a client." The Final Action's rejection of claim 1 fails to show "querying said system, as specified by said request," where the request is from a client because *Wookey's* computer system 100 (the monitoring system) is passive with regard to the diagnostic tests that are run on the monitored system.

Wookey teaches at column 4, lines 6-9, "The diagnostic tests 116, 118, 120, 122, and 124 are run on the computer system 102 under the control of monitor control software 126, 128, 130, 132, and 134. The results of those diagnostic tests are automatically provided at periodic intervals to the computer system 100 which monitors computer system 102." In other words, results of the tests are provided automatically and at periodic intervals to computer system 100, and the testing is controlled by the monitor control software on the monitored system.

Further, there is no teaching in the cited passages of *Wookey*, that tokens or alerts in computer system 100 affect the tests performed by the monitored system or the information received by computer system 100. Thus, computer system 100 does not provide any such request. In fact, *Wookey* teaches that alerts are not used until after the monitoring system (computer system 100) has transformed the received test results into a host state, which illustrates that the alerts cannot be used to query the system because they are used only *after* the test results have been received. *See Wookey* at Abstract.

The Final Action states that the "monitoring system queries the monitored system by using the monitor control software." Final Action at 3. This is incorrect, as there is no indication in *Wookey* that computer system 100 has any control or influence over the operation of the monitor control software or the specific tests that are performed. This is illustrated by the passage at column 16, lines 16-34, which reads, in part, "However, the tests can be selectively enabled (or disabled) according to the monitored system" (emphasis added). Thus, the rejection must fail because it does not show that *Wookey* teaches or suggests, "querying said system, as specified by said request." Accordingly, *Wookey*, as modified, does not teach or suggest the above-recited feature of claim 1.

Dependent claims 2, 3, 5, and 8-12 each depend from independent claim 1 and, thus, inherit all of the limitations of independent claim 1. Thus, *Wookey*, as modified, does not teach all claim limitations of claims 2, 3, 5, and 8-12. It is respectfully submitted that dependent claims 2, 3, 5, and 8-12 are allowable at least because of their dependence from claim 1 for the reasons discussed above. Appellant respectfully requests that the rejection of claims 1-3, 5, and 8-12 be reversed and those claims passed to issue.

2. Claim 4

Claim 4 is rejected under 35 U.S.C. §103(a) over *Wookey*. Final Action at 15. Appellant traverses the rejection.

a. Lack of Motivation to Modify

The Final Action admits that *Wookey* does not teach "using said query for querying said systems as specified by said request, for existence of said condition of said attribute." Final Action at 17. The Final Action then asserts that it would be obvious to modify *Wookey*

to include this feature. Id. at 18. The proposed modification of *Wookey* is improper because the motivation provided is incorrect. The Final Action states at page 18:

> Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the diagnostic test as query for existence of attribute condition in order to issue an alert indicating predefined condition exist in a computer system.

Such a motivation is incorrect because the system of *Wookey* already issues an alert indicating a predefined condition exists in a computer system. *See Wookey* at Abstract, first sentence. Because *Wookey*, without modification, provides such function, one of ordinary skill in the art would not be motivated to modify *Wookey*, as proposed. Thus, the Final Action fails to provide proper motivation for the modification, and the rejection of claim 4 must fail

b. Failure to Teach or Suggest Every Limitation

In addition to the lack of motivation, the 35 U.S.C. §103 rejection is improper because *Wookey* does not teach or suggest every element of claim 4. As discussed further below, *Wookey* does not teach or suggest receiving a request from a client and querying a system as specified by that request. *Wookey* teaches two computer systems—a monitoring system (system 100 of figure 1a) and a monitored system (system 102 of figure 1b). The monitored system runs diagnostic tests on itself and periodically reports the results to the monitoring system. See *Wookey* at Col. 3, line 3 through Col. 4, line 11. The tests that are performed are run under the control of monitor control software that is contained entirely within the monitored system. See *Id.* at Col. 4, lines 4-6 and figures 1a and 1b. There is no indication in the teaching of *Wookey* that the monitoring system has any control over the tests that are run on the monitored system or that it requests that any tests be run. When the monitoring system receives the results of the diagnostic tests, it creates a model of the state of the monitored system and compares that model to one or more alarms that are set to indicate predefined conditions. *Id.* at Abstract.

Therefore, it can be seen that *Wookey* does not teach or suggest receiving a request from a client and querying a system as specified by that request because the monitoring system sends no request to the monitored system and has no control over the tests that are run. Specifically, claim 4 recites, in part, "using said query for querying said systems as

specified by said request, for existence of said condition of said attribute." *Wookey*, as modified, does not teach or suggest at least the above-recited feature of claim 4.

It appears that the Final Action asserts the tests that are run in *Wookey* anticipate the claimed request. Final Action at 16. However, claim 4 requires that the request be "from a client." The rejection of claim 4 fails to show "querying said systems as specified by said request," where the request is from a client because *Wookey's* computer system 100 (the monitoring system) is passive with regard to the diagnostic tests that are run on the monitored system.

Wookey teaches at column 4, lines 6-9, "The diagnostic tests 116, 118, 120, 122, and 124 are run on the computer system 102 under the control of monitor control software 126, 128, 130, 132, and 134. The results of those diagnostic tests are automatically provided at periodic intervals to the computer system 100 which monitors computer system 102." In other words, results of the tests are provided automatically and at periodic intervals to computer system 100, and the testing is controlled by the monitor control software on the monitored system.

Further, there is no teaching in the cited passages of *Wookey*, that tokens or alerts in computer system 100 affect the tests performed by the monitored system or the information received by computer system 100. Thus, computer system 100 does not provide any such request. In fact, *Wookey* teaches that alerts are not used until after the monitoring system (computer system 100) has transformed the received test results into a host state, which illustrates that the alerts cannot be used to query the system because they are used only *after* the test results have been received. *See Wookey* at Abstract.

The Final Action states that the "monitoring system queries the monitored system by using the monitor control software." Final Action at 5. This is incorrect, as there is no indication in *Wookey* that computer system 100 has any control or influence over the operation of the monitor control software or the specific tests that are performed. This is illustrated by the passage at column 16, lines 16-34, which reads, in part, "However, the tests can be selectively enabled (or disabled) according to the monitored system" (emphasis added). Thus, the rejection must fail because it does not show that *Wookey* teaches or suggests, "querying said systems as specified by said request." Accordingly, *Wookey*, as

modified, does not teach or suggest the above-recited feature of claim 4. Therefore, it is respectfully requested that the rejection of claim 4 be reversed and that claim passed to issue.

3. Claim 8

Claim 8 is rejected under 35 U.S.C. §103(a) over *Wookey*. Final Action at 18. Appellant traverses the rejection.

a. Lack of Motivation to Modify

As explained above, the motivation provided for modifying *Wookey*, as proposed is improper. The rejection of claim 8 adds nothing to correct this deficiency. Accordingly, the rejection of claim 8 must fail for lack of motivation to modify *Wookey*.

b. Failure to Teach or Suggest Every Limitation

Claim 8 recites, in part, "wherein said information specifying a query for said system attribute comprises multiple transactions bracketed together." *Wookey* does not teach or suggest at least this feature. The Final Action cites the passage in *Wookey* at column 15, lines 24-54 as teaching the feature (see Final Action at 18); however, such assertion is incorrect. While the passage teaches a variety of possible operators to define alerts, it does not teach or suggest that any of the operators can be bracketed together. Accordingly, the above-recited feature of claim 8 is not taught or suggested by *Wookey*. Claim 8 is also allowable because of its dependence from claim 1, which, as explained above, is allowable. Accordingly, it is respectfully requested that the 35 U.S.C. §103 rejection of claim 8 be reversed and that claim passed to issue.

4. Claim 9

Claim 9 is rejected under 35 U.S.C. §103(a) over *Wookey*. Final Action at 19. Appellant traverses the rejection.

a. Lack of Motivation to Modify

As explained above, the motivation provided for modifying *Wookey*, as proposed is improper. The rejection of claim 9 adds nothing to correct this deficiency. Accordingly, the rejection of claim 9 must fail for lack of motivation to modify *Wookey*.

b. Failure to Teach or Suggest Every Limitation

Claim 9 recites, in part, "multiple conditions bracketed together, wherein upon determining that such bracketed conditions exist, notifying said client of the existence of such bracketed conditions." *Wookey* does not teach or suggest at least this feature. The Final Action cites the passage in *Wookey* at column 15, lines 16-54 as teaching the feature (see Final Action at 19); however, such assertion is incorrect. While the passage teaches a variety of possible operators to define alerts, it does not teach or suggest that any of the operators can be bracketed together. Accordingly, the above-recited feature of claim 9 is not taught or suggested by *Wookey*. Claim 9 is also allowable because of its dependence from claim 1, which, as explained above, is allowable. Accordingly, it is respectfully requested that the 35 U.S.C. §103 rejection of claim 9 be reversed and that claim passed to issue.

5. Claim 10

Claim 10 is rejected under 35 U.S.C. §103(a) over *Wookey*. Final Action at 20. Appellant traverses the rejection.

a. Lack of Motivation to Modify

As explained above, the motivation provided for modifying *Wookey*, as proposed is improper. The rejection of claim 10 adds nothing to correct this deficiency. Accordingly, the rejection of claim 10 must fail for lack of motivation to modify *Wookey*.

b. Failure to Teach or Suggest Every Limitation

Claim 10 recites, in part, "multiple changes bracketed together, wherein upon determining that such bracketed changes exist, notifying said client of the existence of such bracketed changes." *Wookey* does not teach or suggest at least this feature. The Final Action cites the passage in *Wookey* at column 15, lines 16-54 as teaching the feature (see Final Action at 18); however, such assertion is incorrect. While the passage teaches a variety of possible operators to define alerts, it does not teach or suggest that any of the operators can be bracketed together. Accordingly, the above-recited feature of claim 10 is not taught or suggested by *Wookey*. Claim 10 is also allowable because of its dependence from claim 1, which, as explained above, is allowable. Accordingly, it is respectfully requested that the 35 U.S.C. §103 rejection of claim 10 be reversed and that claim passed to issue.

6. Claims 13, 16, and 21

Claims 13, 16, and 21 are rejected under 35 U.S.C. §103(a) over *Wookey*. Final Action at 20-22. Appellant traverses the rejection.

a. Lack of Motivation to Modify

The Final Action admits that *Wookey* does not teach "computer executable software code for querying said system as specified by said request." Final Action at 21. The Final Action then asserts that it would be obvious to modify *Wookey* to include this feature. Id. at 22. The proposed modification of *Wookey* is improper because the motivation provided is incorrect. The Final Action states at page 22:

> Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the diagnostic test as query for existence of attribute condition in order to issue an alert indicating predefined condition exist in a computer system.

Such a motivation is incorrect because the system of *Wookey* already issues an alert indicating a predefined condition exists in a computer system. *See Wookey* at Abstract, first sentence. Because *Wookey*, without modification, provides such function, one of ordinary skill in the art would not be motivated to modify *Wookey*, as proposed. Thus, the Final Action fails to provide proper motivation for the modification, and the rejection of claims 13 16, 17, and 21 must fail.

b. Failure to Teach or Suggest Every Limitation

In addition to the lack of motivation, the 35 U.S.C. §103 rejection is improper because *Wookey* does not teach or suggest every element of claim 13. As discussed further below, *Wookey* does not teach or suggest code in a reporting application that receives a request from a client and queries a system as specified by that request. *Wookey* teaches two computer systems—a monitoring system (system 100 of figure 1a) and a monitored system (system 102 of figure 1b). The monitored system runs diagnostic tests on itself and periodically reports the results to the monitoring system. See *Wookey* at Col. 3, line 3 through Col. 4, line 11. The tests that are performed are run under the control of monitor control software that is contained entirely within the monitored system. See *Id.* at Col. 4, lines 4-6 and figures 1a and 1b. There is no indication in the teaching of *Wookey* that the monitoring system has any

control over the tests that are run on the monitored system or that it requests that any tests be run. When the monitoring system receives the results of the diagnostic tests, it creates a model of the state of the monitored system and compares that model to one or more alarms that are set to indicate predefined conditions. *Id.* at Abstract.

Therefore, it can be seen that *Wookey* does not teach or suggest code in a reporting application that receives a request from a client and queries a system as specified by that request because the monitoring system sends no request to the monitored system and has no control over the tests that are run. Specifically, claim 13 recites, in part, "computer executable software code for querying said system as specified by said request." *Wookey*, as modified, does not teach or suggest at least the above-recited feature of claim 13.

It appears that the Final Action asserts the tests that are run in *Wookey* anticipate the claimed request. Final Action at 20. However, claim 13 requires that the request be "from a client." The rejection of claim 13 fails to show "querying said system as specified by said request," where the request is from a client because *Wookey's* computer system 100 (the monitoring system) is passive with regard to the diagnostic tests that are run on the monitored system.

Wookey teaches at column 4, lines 6-9, "The diagnostic tests 116, 118, 120, 122, and 124 are run on the computer system 102 under the control of monitor control software 126, 128, 130, 132, and 134. The results of those diagnostic tests are automatically provided at periodic intervals to the computer system 100 which monitors computer system 102." In other words, results of the tests are provided automatically and at periodic intervals to computer system 100, and the testing is controlled by the monitor control software on the monitored system.

Further, there is no teaching in the cited passages of *Wookey*, that tokens or alerts in computer system 100 affect the tests performed by the monitored system or the information received by computer system 100. Thus, computer system 100 does not provide any such request. In fact, *Wookey* teaches that alerts are not used until after the monitoring system (computer system 100) has transformed the received test results into a host state, which illustrates that the alerts cannot be used to query the system because they are used only *after* the test results have been received. *See Wookey* at Abstract.

The Final Action states that the "monitoring system queries the monitored system by using the monitor control software." Final Action at 7. This is incorrect, as there is no indication in *Wookey* that computer system 100 has any control or influence over the operation of the monitor control software or the specific tests that are performed. This is illustrated by the passage at column 16, lines 16-34, which reads, in part, "However, the tests can be selectively enabled (or disabled) according to the monitored system" (emphasis added). Thus, the rejection must fail because it does not show that *Wookey* teaches or suggests, "querying said system as specified by said request." Accordingly, *Wookey*, as modified, does not teach or suggest the above-recited feature of claim 13.

Dependent claims 16, 17, and 21 depend from independent claim 13 and, thus, inherit all of the limitations of independent claim 13. Thus, *Wookey* does not teach or suggest all claim limitations of claims 16, 17, and 21. It is respectfully submitted that dependent claims 16 and 21 are allowable at least because of their dependence from claim 13 for the reasons discussed above. Therefore, it is respectfully requested that the rejection of claims 13, 16, 17, and 21 be reversed and those claims passed to issue.

7. Claim 17

Claim 17 is rejected under 35 U.S.C. §103(a) over *Wookey*. Final Action at 22. Appellant traverses the rejection.

a. Lack of Motivation to Modify

As explained above, the motivation provided for modifying *Wookey*, as proposed is improper. The rejection of claim 17 adds nothing to correct this deficiency. Accordingly, the rejection of claim 17 must fail for lack of motivation to modify *Wookey*.

b. Failure to Teach or Suggest Every Limitation

Claim 17 recites, in part, "multiple changes bracketed together." *Wookey* does not teach or suggest at least this feature. The Final Action cites the passage in *Wookey* at column 15, lines 16-54 as teaching the feature (see Final Action at 22); however, such assertion is incorrect. While the passage teaches a variety of possible operators to define alerts, it does not teach or suggest that any of the operators can be bracketed together. Accordingly, the

above-recited feature of claim 17 is not taught or suggested by *Wookey*. Claim 17 is also allowable because of its dependence from claim 13, which, as explained above, is allowable. Accordingly, it is respectfully requested that the 35 U.S.C. §103 rejection of claim 17 be reversed and that claim passed to issue.

8. Claims 18, 20, and 22

Claims 18, 20, and 22 are rejected under 35 U.S.C. §103(a) over *Wookey*. Final Action at 20-23. Appellant traverses the rejection.

a. Lack of Motivation to Modify

The Final Action admits that *Wookey* does not teach "computer executable software code for querying said system as specified by said request." Final Action at 21. The Final Action then asserts that it would be obvious to modify *Wookey* to include this feature. Id. at 22. The proposed modification of *Wookey* is improper because the motivation provided is incorrect. The Final Action states at page 22:

> Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the diagnostic test as query for existence of attribute condition in order to issue an alert indicating predefined condition exist in a computer system.

Such a motivation is incorrect because the system of *Wookey* already issues an alert indicating a predefined condition exists in a computer system. *See Wookey* at Abstract, first sentence. Because *Wookey*, without modification, provides such function, one of ordinary skill in the art would not be motivated to modify *Wookey*, as proposed. Thus, the Final Action fails to provide proper motivation for the modification, and the rejection of claims 18, 20, and 22 must fail.

b. Failure to Teach or Suggest Every Limitation

In addition to the lack of motivation, the 35 U.S.C. §103 rejection is improper because *Wookey* does not teach or suggest every element of claim 18. As discussed further below, *Wookey* does not teach or suggest code in a reporting application that receives a request from a client and queries a system as specified by that request. *Wookey* teaches two computer systems—a monitoring system (system 100 of figure 1a) and a monitored system (system 102

of figure 1b). The monitored system runs diagnostic tests on itself and periodically reports the results to the monitoring system. See *Wookey* at Col. 3, line 3 through Col. 4, line 11. The tests that are performed are run under the control of monitor control software that is contained entirely within the monitored system. See *Id.* at Col. 4, lines 4-6 and figures 1a and 1b. There is no indication in the teaching of *Wookey* that the monitoring system has any control over the tests that are run on the monitored system or that it requests that any tests be run. When the monitoring system receives the results of the diagnostic tests, it creates a model of the state of the monitored system and compares that model to one or more alarms that are set to indicate predefined conditions. *Id.* at Abstract.

Therefore, it can be seen that *Wookey* does not teach or suggest code in a reporting application that receives a request from a client and queries a system as specified by that request because the monitoring system sends no request to the monitored system and has no control over the tests that are run. Specifically, claim 18 recites, in part, "computer executable software code for querying said system as specified by said request." *Wookey*, as modified, does not teach or suggest at least the above-recited feature of claim 18.

It appears that the Final Action asserts the tests that are run in *Wookey* anticipate the claimed request. Final Action at 20. However, claim 18 requires that the request be "from a client application program." The rejection of claim 18 fails to show "querying said system as specified by said request," where the request is "from a client application program" because *Wookey's* computer system 100 (the monitoring system) is passive with regard to the diagnostic tests that are run on the monitored system.

Wookey teaches at column 4, lines 6-9, "The diagnostic tests 116, 118, 120, 122, and 124 are run on the computer system 102 under the control of monitor control software 126, 128, 130, 132, and 134. The results of those diagnostic tests are automatically provided at periodic intervals to the computer system 100 which monitors computer system 102." In other words, results of the tests are provided automatically and at periodic intervals to computer system 100, and the testing is controlled by the monitor control software on the monitored system.

Further, there is no teaching in the cited passages of *Wookey*, that tokens or alerts in computer system 100 affect the tests performed by the monitored system or the information

received by computer system 100. Thus, computer system 100 does not provide any such request. In fact, *Wookey* teaches that alerts are not used until after the monitoring system (computer system 100) has transformed the received test results into a host state, which illustrates that the alerts cannot be used to query the system because they are used only *after* the test results have been received. *See Wookey* at Abstract.

The Final Action states that the "monitoring system queries the monitored system by using the monitor control software." Final Action at 8-9. This is incorrect, as there is no indication in *Wookey* that computer system 100 has any control or influence over the operation of the monitor control software or the specific tests that are performed. This is illustrated by the passage at column 16, lines 16-34, which reads, in part, "However, the tests can be selectively enabled (or disabled) according to the monitored system" (emphasis added). Thus, the rejection must fail because it does not show that *Wookey* teaches or suggests, "querying said system as specified by said request." Accordingly, *Wookey*, as modified, does not teach or suggest the above-recited feature of claim 18.

Dependent claims 20 and 22 depend from independent claim 18 and, thus, inherit all of the limitations of independent claim 18. Thus, *Wookey* does not teach or suggest all claim limitations of claims 20 and 22. It is respectfully submitted that dependent claims 20 and 22 are allowable at least because of their dependence from claim 18 for the reasons discussed above. Therefore, Appellant requests that the rejection of claims 18, 20, and 22 be reversed and those claims passed to issue.

B. Second Ground of Rejection

1. Claim 7

Claim 7 is rejected under 35 U.S.C. §103(a) over *Wookey* in view of *Sybase*. Final Action at 23-26. Appellant traverses the rejection.

To establish a prima facie case of obviousness under 35 U.S.C. § 103(a), three basic criteria must be met. First, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the applied reference. *See Vaeck*, 20 USPQ2d 1438. Second, there must be a reasonable expectation of success. *Merck*, 231 USPQ 375. Finally, the applied reference

must teach or suggest all the claim limitations. *Royka*, 180 USPQ 580. Without conceding any other criteria, Appellant asserts that the Final Action's rejection of this claims does not satisfy the first and third criteria.

a. Lack of Motivation to Modify

The Final Action admits that *Wookey* does not teach "querying said system as specified by said request." Final Action at 25. The Final Action then asserts that it would be obvious to modify *Wookey* to include this feature. Id. at 25. The proposed modification of *Wookey* is improper because the motivation provided is incorrect. The Final Action states at page 26:

> Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the diagnostic test for querying the system and using SQL as taught by *Sybase* to implement the test in order to issue an alert indicating predefined condition exist in a computer system.

Such a motivation is incorrect because the system of *Wookey* already issues an alert indicating a predefined condition exists in a computer system. *See Wookey* at Abstract, first sentence. Because *Wookey*, without modification or combination with *Sybase*, provides such function, one of ordinary skill in the art would not be motivated to make the proposed combination. Thus, the Final Action fails to provide proper motivation for the modification, and the rejection of claim 7 must fail.

b. Failure to Teach or Suggest Every Limitation

In addition to the lack of motivation, the 35 U.S.C. §103 rejection is improper because *Wookey* does not teach or suggest every element of claim 7. As discussed further below, *Wookey* does not teach or suggest receiving a request from a client and querying a system as specified by that request. *Wookey* teaches two computer systems—a monitoring system (system 100 of figure 1a) and a monitored system (system 102 of figure 1b). The monitored system runs diagnostic tests on itself and periodically reports the results to the monitoring system. See *Wookey* at Col. 3, line 3 through Col. 4, line 11. The tests that are performed are run under the control of monitor control software that is contained entirely within the monitored system. See *Id.* at Col. 4, lines 4-6 and figures 1a and 1b. There is no indication in the teaching of *Wookey* that the monitoring system has any control over the tests that are

run on the monitored system or that it requests that any tests be run. When the monitoring system receives the results of the diagnostic tests, it creates a model of the state of the monitored system and compares that model to one or more alarms that are set to indicate predefined conditions. *Id.* at Abstract.

Therefore, it can be seen that *Wookey* does not teach or suggest receiving a request from a client and querying a system as specified by that request because the monitoring system sends no request to the monitored system and has no control over the tests that are run. Specifically, claim 7 recites, in part, "querying said system as specified by said request." The proposed combination does not teach or suggest at least the above-recited feature of claim 7.

It appears that the Final Action asserts the tests that are run in *Wookey* anticipate the claimed request. Final Action at 24. However, claim 7 requires that the request be "from a client." The rejection of claim 7 fails to show "querying said system as specified by said request," where the request is from a client because *Wookey's* computer system 100 (the monitoring system) is passive with regard to the diagnostic tests that are run on the monitored system.

Wookey teaches at column 4, lines 6-9, "The diagnostic tests 116, 118, 120, 122, and 124 are run on the computer system 102 under the control of monitor control software 126, 128, 130, 132, and 134. The results of those diagnostic tests are automatically provided at periodic intervals to the computer system 100 which monitors computer system 102." In other words, results of the tests are provided automatically and at periodic intervals to computer system 100, and the testing is controlled by the monitor control software on the monitored system.

Further, there is no teaching in the cited passages of *Wookey*, that tokens or alerts in computer system 100 affect the tests performed by the monitored system or the information received by computer system 100. Thus, computer system 100 does not provide any such request. In fact, *Wookey* teaches that alerts are not used until after the monitoring system (computer system 100) has transformed the received test results into a host state, which illustrates that the alerts cannot be used to query the system because they are used only *after* the test results have been received. *See Wookey* at Abstract.

The Final Action states that the "monitoring system queries the monitored system by using the monitor control software." Final Action at 10. This is incorrect, as there is no indication in *Wookey* that computer system 100 has any control or influence over the operation of the monitor control software or the specific tests that are performed. This is illustrated by the passage at column 16, lines 16-34, which reads, in part, "However, the tests can be selectively enabled (or disabled) according to the monitored system" (emphasis added). Thus, the rejection must fail because it does not show that *Wookey* teaches or suggests, "querying said system as specified by said request." Thus, the cited combination does not teach or suggest at least the above-referenced feature of claim 7. Therefore, it is respectfully requested that the rejection of claim 7 be reversed and that claim passed to issue.

2. Claim 14

Claim 14 is rejected under 35 U.S.C. §103(a) over *Wookey* in view of *Sybase*. Final Action at 23 and 26. Appellant traverses the rejection.

a. Lack of Motivation to Modify

As explained above, the motivation provided for combining *Wookey* and *Sybase*, as proposed is improper. The rejection of claim 14 adds nothing to correct this deficiency. Also, there is incorrect motivation provided for modifying *Wookey*, as set out in the rejection of parent claim 13, as described above. Accordingly, the rejection of claim 14 must fail for lack of motivation to combine *Wookey* and *Sybase* and to modify *Wookey*.

b. Failure to Teach or Suggest Every Limitation

As shown above, *Wookey* does not teach or suggest every feature of claim 13. Dependent claim 14 depends from independent claim 13 and, thus, inherits all of the limitations of independent claim 13. The Final Action does not rely on *Sybase* to teach the missing feature. Thus, the cited combination of *Wookey* and *Sybase* does not teach or suggest all claim limitations of claim 14. It is respectfully submitted that dependent claim 14 is allowable at least because of its dependence from claim 13 for the reasons discussed above. Accordingly, Appellant respectfully requests that the rejection of claim 14 be reversed and that claim passed to issue.

VIII. CLAIMS

A copy of the claims involved in the present appeal is attached hereto as Appendix A. As indicated above, the claims in Appendix A include the amendments filed by Appellant on October 14, 2004 in response to a non-final Office Action.

IX. EVIDENCE

No evidence pursuant to §§ 1.130, 1.131, or 1.132 or entered by or relied upon by the Final Action is being submitted.

X. RELATED PROCEEDINGS

No related proceedings are referenced in II. above, or copies of decisions in related proceedings are not provided, hence no Appendix is included.

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Date of Deposit: April 25, 2005

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APPENDIX A

Claims Involved in the Appeal of Application Serial No. 09/422,998

1. A computer method of reporting existence of a specified condition in a system attribute, said method comprising:

receiving by a reporting application, which includes computer-executable software code stored to a computer-readable medium, a request from a client to notify said client of a condition of an attribute of a system, wherein said request comprises information specifying a query for said system attribute;

using by said reporting application said query for querying said system as specified by said request, for existence of said condition of said attribute;

receiving by said reporting application raw data from said system;

deriving said data about said system attribute to determine if said condition exists; and

upon determining that said condition exists, notifying said client of the existence of said condition.

2. The method of claim 1, wherein said deriving data comprises generating derived data based upon the result of said query of said system.

3. The method of claim 1, wherein said condition is a change in said attribute.

4. A method of reporting existence of a specified condition in a system attribute, said method comprising:

receiving a request from a client to notify said client of a condition of an attribute of a system, wherein said request comprises information specifying a query for said system attribute and wherein said attribute is selected from the group consisting of membership of nodes within a cluster, configuration of a cluster, status of a peripheral device, failure of computer hardware, access to local peripherals, addition of shared peripherals, removal of shared peripherals, ownership of a shared peripheral, availability of shared peripherals for addition to a cluster, resilience to faults of a High Availability cluster, performance potential of a cluster, and any combination thereof;

using said query for querying said systems as specified by said request, for existence of said condition of said attribute;

deriving data about said system attribute to determine if said condition exists; and

upon determining that said condition exists, notifying said client of the existence of said condition.

5. The method of claim 1, wherein said client is selected from the group consisting of a user and a client application program.

6. (Canceled)

7. A method of reporting existence of a specified condition in a system attribute, said method comprising:

receiving a request from a client to notify said client of a condition of an attribute of a system, wherein said request comprises information specifying a query for said system attribute, wherein said information specifying a query for said system attribute is an SQL query, and wherein said SQL query comprises an SQL view;

querying said system as specified by said request;

deriving data about said system attribute to determine if said condition exists; and

upon determining that said condition exists, notifying said client of the existence of said condition.

8. The method of claim 1, wherein said information specifying a query for said system attribute comprises multiple transactions bracketed together.

9. The method of claim 1, wherein said condition comprises:

multiple conditions bracketed together, wherein upon determining that such bracketed conditions exist, notifying said client of the existence of such bracketed conditions.

10. The method of claim 9, wherein said condition comprises:

multiple changes bracketed together, wherein upon determining that such bracketed changes exist, notifying said client of the existence of such bracketed changes.

11. The method of claim 1, wherein said client is a graphical user interface (GUI) that displays information to a human user.

12. The method of claim 11, wherein said GUI displays information about one or more attributes of a system to a human user, and wherein said deriving data comprises deriving data to determine if a condition of said one or more attributes exists such that the GUI should redraw the graphics displaying said information about said one or more attributes.

13. A reporting application for reporting the existence of a specified condition in a system attribute to a client, said reporting application comprising:

computer executable software code for receiving from a client a request to notify said client of a condition of an attribute of a system, wherein said request comprises information specifying a query for said system attribute;

computer executable software code for querying said system as specified by said request;

computer executable software code for deriving data about said system attribute;

computer executable software code for determining from said derived data if said condition exists; and

computer executable software code that, upon determining that said condition exists, notifies said client of the existence of said condition.

14. The reporting application of claim 13, wherein said information specifying a query for said system attribute is an SQL query.

15. (Canceled)